IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WA.No. 1826 of 2007

AGAINST THE JUDGEMENT IN WPC.14689/2007 Dated 18/06/2007
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APPELLANTS: PETITIONERS IN W.P:
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1. A. ABDUL RAHIM,
   VILAYIL PUTHEN VEEDU, PUTHENCHANTHA P.O.,
   CHAVARA, KOLLAM.

2. SHAREEFA BEEVI,
   VILAYIL PUTHEN VEEDU, PUTHENCHANTHA P.O.,
   CHAVARA, KOLLAM.

3. SHIHABUDHEEN,
   VILAYIL PUTHEN VEEDU, PUTHENCHANTHA P.O.,
   CHAVARA, KOLLAM.

4. A. NAZARUDHEEN,
   VILAYIL PUTHEN VEEDU, PUTHENCHANTHA P.O.,
   CHAVARA, KOLLAM.

5. A. ABDUL LATHEEF,
   VILAYIL PUTHEN VEEDU, PUTHENCHANTHA P.O.,
   CHAVARA, KOLLAM.

6. A. SHAJAHAN,
   VILAYIL PUTHEN VEEDU, PUTHENCHANTHA P.O.,
   CHAVARA, KOLLAM.

7. ASEELA BEEVI,
   VILAYIL PUTHEN VEEDU, PUTHENCHANTHA P.O.,
   CHAVARA, KOLLAM.

BY ADV. SRI.S.SOMAN
SMT.P.RAJATHA

RESPONDENTS: RESPONDENTS IN W.P:
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1. THE KERALA FINANCIAL CORPORATION,
DISTRICT OFFICE, YMCA BUILDING, QUILON-691 001.

2. THE DEPUTY TAHSILDAR (RR),
KERALA FINANCIAL CORPORATION, KOLLAM.

3. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 & 2 BY SRI A.A.ABUL HASSAN, STANDING COUNSEL FOR KFC.
R3 BY SPECIAL GOVERNMENT PLEADER SRI C.T.RAVIKUMAR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A.No.1826 of 2007

Dated, this the 24th day of July, 2007

JUDGMENT

H.L. DATTU, CJ.

A writ petition was filed inter alia questioning the revenue recovery proceedings initiated by the Kerala Financial Corporation for recovery of arrears of loan availed by the petitioner.

2. This is the fourth round of litigation. On all the earlier occasions somehow the petitioner could drag on the proceedings without paying any amount due to the respondent Corporation.

3. In fact, the learned single in his order dated 18th June, 2007 has gone to the extent of saying that even when OTS benefit was granted to the petitioners, they were not even prepared to take it.

4. First and foremost, the writ court is not expected to interfere with the revenue recovery proceedings unless the party questions the basic order that is passed and the recovery notice issued pursuant thereto.

5. In the instant case the corporation, for realising the debts due to it from the defaulter, has initiated revenue recovery proceedings only after taking over of the petitioners' unit by exercising their power under section 29 of the State Kerala Financial Corporation Act. If for any reason the petitioners are aggrieved, they ought to have questioned the said order passed by the Financial Corporation. Without doing so, the petitioners are

not expected to file a writ petition questioning the recovery notice issued pursuant to the orders passed by the State Financial Corporation under section 29 of the Act.

6. At this stage we intend to remind ourselves the observations made by the Apex Court in matters of this nature. The Supreme Court in *U.P. Financial Corporation v. M/s. Gem Cap (India) Pvt. Ltd. - AIR 1993 SC 1435* has stated as under:

> "In a matter between the Corporation and its debtor, a writ court has no say except in two situations : (1) there is a statutory violation on the part of the Corporation, or (2) where the Corporation acts unfairly i.e., unreasonably. Acting unfairly or unreasonably does not mean that the High Court exercising its jurisdiction under Art.226 of the Constitution can sit as an Appellate Authority over the acts and deeds of the corporation and seek to correct them. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints - self-imposed undoubtedly - of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless."

7. The aforesaid dictum of the apex court is binding on us in view of Article 141 of the Constitution. In our opinion a writ court, except in those two exceptional circumstances stated by the Supreme Court in *M/s. Gem*

*Cap'*s case, is not expected to interfere with the revenue recovery proceedings initiated by the Kerala Financial Corporation for realising the debts due under the Act. In that view of the matter we are of the opinion that the learned Judge has not committed any error whatsoever which would call for our interference.

Therefore, this writ appeal requires to be rejected and it is rejected. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/